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18 NATIONAL SECURITY TECHNOLOGIES, LLC

19 **UNITED STATES DISTRICT COURT**

20 **DISTRICT OF NEVADA**

21 EAGLE ROCK CONTRACTING, LLC,  
22 Plaintiff,  
23 vs.  
24 NATIONAL SECURITY TECHNOLOGIES, LLC,  
25 Defendant.

CASE No. 2:14-cv-01278-GMN-NJK

**STIPULATED  
CONFIDENTIALITY AGREEMENT  
AND PROTECTIVE ORDER**

AS AMENDED, PAGE 9

26 WHEREAS, Plaintiff Eagle Rock Contracting, LLC (“ERC”) and Defendant National  
27 Security Technologies, LLC (“NSTec”) believe that discovery conducted during this litigation  
28 may involve the disclosure of confidential and/or privileged documents and/or information,  
including, but not limited to, sensitive, proprietary, and confidential business information  
relevant to the above captioned dispute between ERC and NSTec (the “Parties”), filed in the  
United States District Court for the District of Nevada on July 25, 2014.

WHEREAS the Parties, by, between, and among their respective counsel, having stipulated and agreed to the terms set forth herein, and good cause having been shown, wish to provide for the confidential treatment of all such Confidential Material (as defined below); and

WHEREAS the Parties agree to the entry of an order, pursuant to Federal Rule of Civil Procedure 26(c) and Federal Rule of Evidence 502, governing the review, copying, dissemination, and filing of confidential documents and information to be produced by any Party and its respective counsel or by any non-party during the course of discovery in this matter to the extent set forth below.

Subject to the Court's approval, the Parties hereby stipulate and agree to the following protective order:

## I. DEFINITIONS

**A. DESIGNATING PARTY.** “Designating Party” shall mean any person or entity, regardless of whether a Party to this action, who produces Confidential Information (as defined below) in connection with this litigation.

**B. RECEIVING PARTY.** “Receiving Party” shall mean all persons or entities, regardless of whether a Party to this action, who receive Confidential Information in connection with this litigation.

**C. CONFIDENTIAL INFORMATION.** "Confidential Information" shall mean all documents and testimony, and all information contained therein or derived therefrom, that is:

1. Produced for or disclosed to a Receiving Party;
2. Considered by the Designating Party in good faith to constitute or to contain confidential, proprietary, financial, or otherwise sensitive or

privileged information, whether embodied in physical objects, documents, or the factual knowledge of persons;

3. Identified by the Designating Party in the manner described below in Section II.

**D. CONFIDENTIALITY LEGEND.** “Confidentiality Legend” shall refer to the marking on documents or information with the phrase “CONFIDENTIAL—Subject to Protective Order.”

## II. DESIGNATION OF CONFIDENTIAL INFORMATION

A. **Designation.** When the Designating Party produces, discloses, or otherwise reveals Confidential Information, any such document, transcript, material, item, or thing deemed to be confidential shall be clearly designated or marked with the appropriate Confidentiality Legend and treated as confidential.

1. In the case of deposition testimony, the designation shall be made by making an oral statement to such effect on the record during the course of the deposition, or by written notification to all Parties within thirty (30) days following receipt of the transcript of such deposition and the exhibits thereto (or later with leave of Court or by agreement among the Parties). Written designation must be made by reference to the specific page(s) and line number(s). Prior to the expiration of such thirty (30) day period (or until a designation is made by counsel, if such a designation is made in a shorter period of time), all such testimony and information shall be treated as Confidential Information.

2. In the case of written documents, including, but not limited to, documentary evidence, affidavits, declarations, statements, written responses to requests for

1 production of documents, and responses to interrogatories or requests for admission,  
2 the appropriate Confidentiality Legend shall be placed on each page of any such  
3 written documents that contain information deemed by the Designating Party to be  
4 Confidential Information.

5 3. If only a part or portion of a written document warrants protection under this  
6 Order, the Designating Party, to the extent practicable, shall identify the protected  
7 part(s) or portion(s) and clearly designate or mark the same with the appropriate  
8 Confidentiality Legend.

9 4. If the document, material, item, or thing is stored or recorded electronically,  
10 and a legend cannot be stamped or affixed upon it, the Designating Party may  
11 designate or mark the same as "CONFIDENTIAL—Subject to Protective Order" by a  
12 cover letter, cover page, or by any other reasonable means to identify the information  
13 as Confidential Information.

14 5. Documents produced by third parties shall be deemed Confidential Information  
15 for a period of thirty (30) days in order to permit the Parties to review the documents  
16 and determine if any portion of the documents shall be designated as Confidential  
17 Information. Within the thirty (30) day period, a Party that determines that documents  
18 produced by a third party include Confidential Information shall inform all other  
19 Parties of the specific documents or information that shall be deemed confidential and  
20 provide replacement copies of the Confidential Information that bear the appropriate  
21 Confidentiality Legend.

22 B. **Time for Making Designation.** Any such designation or marking shall take  
23 place prior to production or disclosure by the Designating Party; provided, however, that in  
24

1 the event that any document, material, item, or thing that may contain Confidential  
2 Information is made available for inspection by a Party, there will be no waiver of  
3 confidentiality by the inspecting of such document, material, item, or thing before it is copied  
4 and designated or marked with a Confidentiality Legend, and the inspecting Party shall treat  
5 the inspected material(s) as confidential, unless otherwise indicated by the Party permitting  
6 inspection.

7       **C. Representation by Designating Party.** By designating or marking any  
8 document, transcript, material, item, or thing as containing Confidential Information, the  
9 Designating Party is certifying that there is a good faith basis, both in law and in fact, for the  
10 designation or marking within the meaning of F.R.C.P. 26(g).

11       **D. Withdrawal of Confidentiality Designation.** A Designating Party may  
12 withdraw its previous designation of documents or information as confidential upon written  
13 notice to the Receiving Party and reproduction of the formerly designated documents without  
14 a Confidentiality Legend.

15       **E. Dispute Regarding Confidentiality Designation.** If, at any time, a Party  
16 wishes for any reason to dispute the Designating Party's designation of a document,  
17 transcript, material, item, or thing as Confidential Information and/or object to the inclusion  
18 of Confidential Information in any pleading, motion, brief, memorandum, or other paper filed  
19 with the Court, such Party (the "Disputing Party") shall notify the Designating Party of such  
20 dispute, in writing.

21       1. The Disputing Party shall, in writing, specifically identify the document,  
22 transcript, material, item, or thing designated as Confidential Information that is in  
23 dispute, by Bates Number or any other means sufficient to put the other Party on

1 notice of the information in dispute, and set forth the precise factual and/or legal basis  
2 of its dispute with regard to each such document, transcript, material, item, or thing.

3 2. The Designating Party shall have fourteen (14) business days to respond. If the  
4 Designating Party refuses to remove the Confidential Legend, the Parties must  
5 participate in a discovery dispute conference at a mutually-agreeable date and time.

6 3. If the Parties are thereafter unable to amicably resolve the dispute, the  
7 Disputing Party may apply by motion to the Court for a ruling as to whether the  
8 designated material may, in accordance with this Order, be properly treated as  
9 confidential, provided such motion is made within thirty (30) days from the date on  
10 which the Parties, after their good faith attempt, were unable to resolve the dispute, or  
11 such other time period as the Parties may agree. The Designating Party shall have the  
12 burden of establishing that the disputed document, transcript, material, item, or thing  
13 contains Confidential Information entitled to protection under this Order.

14 F. **Documents and Materials Previously Designated Confidential.** This Order  
15 shall apply to any document, transcript, material, item, or thing designated as Confidential  
16 Information prior to the entry of this Order.

17 G. **Right to Clawback.**

18 1. In the event a Designating Party inadvertently produces documents or information  
19 that it considers to be or to contain Confidential Information, without having first  
20 designated the material as such, the Designating Party may so designate it. The  
21 Designating Party must give written notice to all Parties that it claims that the material  
22 is or contains Confidential Information, in whole or in part. Upon such notice, the  
23 Designating Party shall provide all Parties who have received a copy of such materials  
24  
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26  
27  
28

1 with a replacement copy marked with the Confidentiality Legend. All Parties  
2 receiving the replacement copy shall within (7) business days destroy, sequester, or  
3 return to the Designating Party, the (i) unmarked copy of the Confidential Information  
4 and any copies thereof and (ii) any work product or portions of any work product  
5 containing or reflecting unmarked copies of the Confidential Information.

6 2. Likewise, upon receipt of written notice from the Designating Party identifying any  
7 documents as being subject to non-disclosure on grounds including, but not limited to,  
8 privilege and attorney work-product (“Privileged Information”), the Receiving Party  
9 shall within seven (7) business days: (a) return or destroy (i) the Privileged  
10 Information; (ii) all copies; and (iii) any work product or portions of any work product  
11 containing or reflecting the contents of the Privileged Information. The Receiving  
12 Party must provide written certification of destruction to the Designating Party, must  
13 not use or disclose the Privileged Information until the claim is resolved, and must  
14 take reasonable steps to retrieve the information if the Receiving Party disclosed it  
15 before being notified. The Receiving Party may, within seven (7) business days (and  
16 after participating in a discovery dispute conference with the Designating Party  
17 consistent with applicable Court rules), file a motion to challenge the assertion of  
18 Privileged Information with the Court and tender the Privileged Information *in camera*  
19 or under seal.

20 3. In connection with documents produced by the Parties, the inadvertent disclosure  
21 of any document which is subject to a legitimate claim that the document should have  
22 been withheld as Privileged Information shall NOT waive any privilege for that  
23 document or for the subject matter of the inadvertently disclosed document in the

1 present case or any other federal or state proceeding. These provisions are intended to  
2 be consistent with Federal Rule of Evidence 502 and are not to be construed to expand  
3 or diminish any of the Parties' rights or obligations as therein described.  
4

5 **III. USE OF CONFIDENTIAL INFORMATION**

6 **A. Use Generally.** All Confidential Information shall be used by the Parties, or  
7 non-parties to whom Confidential Information is produced, disclosed, or otherwise made  
8 available as permitted by this Order, solely for the purposes of this litigation and for no other  
9 purpose without prior written approval from the Court or the prior written consent of the  
10 Parties. Except as otherwise provided in this Order, Confidential Information shall not be  
11 disclosed or revealed to anyone other than as provided under Section IV of this Order, and  
12 shall be handled in the manner set forth herein until such Confidentiality Legend is removed  
13 by the Designating Party or by order of the Court, as well as any other court which may be  
14 handling appeals in this Case.  
15

16 **B. Procedure.** The Receiving Party must proceed as follows:  
17

18 1. Store and maintain Confidential Information in a secure manner, within its  
19 exclusive possession and control;

20 2. Take all measures reasonably necessary and appropriate to maintain the  
21 confidentiality of Confidential Information; and

22 3. Not permit or participate in the unauthorized production, disclosure, or use of  
23 Confidential Information.  
24

25 **C. Limited Purpose.** Confidential Information shall be utilized by the Receiving  
26 Party and/or its counsel only for purposes of this litigation and for no other purposes except  
27 that the Receiving Party, if necessary, may show Confidential Information to parties identified  
28

1 in Section IV. Extracts, summaries, copies, abstracts, or other documents, derived in whole or  
2 in part from material designated as Confidential Information, shall also be treated as  
3 Confidential Information in accordance with the provisions of this Protective Order.  
4

5 **D. Filed Documents.** See order issued concurrently herewith  
6 motion, or other paper containing c  
7 LR II 10-5. The documents and/or information shall be filed under seal and shall bear the  
8 legend:  
9

10 **THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION**  
11 **COVERED BY A PROTECTIVE ORDER OF THE COURT AND IS**  
12 **SUBMITTED UNDER SEAL PURSUANT TO THAT**  
13 **PROTECTIVE ORDER. THE CONFIDENTIAL CONTENTS OF**  
14 **THIS DOCUMENT MAY NOT BE DISCLOSED WITHOUT**  
15 **EXPRESS ORDER OF THE COURT.**

16 Any such filing of Confidential Information shall be done in a manner consistent with  
17 federal custom and procedures regarding the filing of information under seal. Moreover, said  
18 Confidential Information shall be kept under seal until further order of the Court; however,  
19 such Confidential Information shall be available to the Court and counsel of record, and to all  
20 other persons entitled to receive Confidential Information under the terms of this Order. Upon  
21 failure of the filing or lodging Party to properly file Confidential Information under seal, any  
22 other Party may do so after learning of the defective filing or lodging. Notice of such action  
23 shall be given to the Parties.  
24  
25

#### IV. ACCESS TO CONFIDENTIAL INFORMATION

**A. Persons Allowed Access to Confidential Information.** Any information, documents, transcripts, materials, items, or things designated or marked as containing Confidential Information shall not be used or shown, disclosed, revealed, disseminated, copied, or in any way communicated to any person or entity for any purpose whatsoever; provided, however, that Confidential Information may be disclosed, revealed or otherwise made available to the following recipients:

1. Personnel of the Parties actually engaged in assisting in the preparation of this action for trial or other proceeding herein;
2. Counsel for the Parties to this action and their associated attorneys, paralegals, and other professional personnel (including support staff) who are directly assisting such counsel in the preparation of this action for trial or other proceeding herein, and are under the supervision or control of such counsel;
3. Expert witnesses or consultants (and their associated personnel and staff) retained by the Parties or their counsel to furnish technical or expert services in connection with this action or to give testimony with respect to the subject matter of this action at the trial of this action or other proceeding herein;
4. The Court and its personnel, jurors, and alternate jurors;
5. An officer before whom a deposition is taken, including stenographic reporters and any necessary secretarial, clerical, or other personnel of such officer;
6. Outside photocopying, graphic production services, or litigation support services;

1       7. Any person who is indicated on the face of the document to have been an  
2       author, addressee, or recipient thereof; who is alleged by a Party to be an author,  
3       addressee, or recipient thereof; or who counsel believes in good faith has previously  
4       received the document or information by legal means from the Designating Party or  
5       another third party;

6  
7       8. Trial and deposition witnesses; and

8  
9       9. Any other person or non-party as to whom the Parties to this Order agree in  
10       writing may be given access to any discovery material(s) containing Confidential  
11       Information.

12       Notwithstanding the foregoing, if Confidential Information is disclosed to a witness,  
13       expert, or other third party pursuant to subparagraphs (3), (7), (8), or (9), the witness, expert,  
14       or third party must execute the "Acknowledgment and Agreement to Be Bound," attached  
15       hereto as Exhibit A, prior to the disclosure of any Confidential Information to such witness,  
16       expert, or third party. The executed Acknowledgment and Agreement to be Bound must be  
17       maintained by counsel for a given Party, a copy of which shall be provided upon reasonable  
18       request of the opposing Party.

19  
20       B. **Endorsement of Stipulation and Protective Order.** All persons or entities  
21       obtaining, receiving, or being given access to Confidential Information, in accordance with  
22       the terms and conditions of this Order, consent to the continuing jurisdiction of the Court for  
23       the purpose(s) of enforcing this Order and/or remedying any violations thereof.

24  
25       V. **RESERVATION OF RIGHTS**

26  
27       A. Notwithstanding the foregoing, this Protective Order shall not be construed:  
28

1. To apply to any document(s) or information that has been or become part of the public domain by publication or otherwise and not due to any unauthorized act or omission on the part of the Receiving Party; or
2. To apply to any document(s) or information that, under law, has been declared to be in the public domain.

B. Producing or receiving documents and other information in accordance with this Order, or failing to object thereto, shall not:

1. Constitute a waiver by any person or Party of any right to object to or seek a further protective order with respect to any request for information in this or in any other action;
2. Operate as an admission by any Party that any particular documents or other information comprise or reflect trade secrets, proprietary information or any other type of confidential information;
3. Prejudice or waive in any way, the rights of the Parties to object to the production of documents they consider not subject to discovery for any reason other than the confidentiality of the documents;
4. Prejudice or waive in any way, the rights of any Party to object to the authenticity, relevancy, or admissibility into evidence of any document, testimony, or other evidence subject to the Protective Order; or
5. Prejudice or waive in any way, any claim or defense with respect to the proceeding.

C. Nothing in this Order shall prevent any Party from using or disclosing its own documents or information.

1           D.     In the event that disclosure of any Confidential Information is sought from  
2 anyone who is subject to this Order pursuant to a lawful subpoena, demand by governmental  
3 authority or other legal process, such person or entity shall, upon receipt of such request,  
4 notify the Designating Party within seven (7) days of the request for disclosure. The  
5 Designating Party may then seek to prevent disclosure by filing a motion for protective order  
6 or take other appropriate action and, if so, the Confidential Information shall not be disclosed  
7 until the Designating Party's objection and/or motion for protective order has been resolved  
8 by agreement of the Parties or court order.

9  
10           E.     This Order may be modified or amended by agreement of the Parties, subject  
11 to approval by the Court, or by order of the Court for good cause shown.

12  
13           F.     This Order shall not act as a shield for any person or entity to refuse to disclose  
14 any information that it is, by law, rule, and/or court order, obligated to disclose.

15  
16           G.     This Order shall not be interpreted in a manner that would violate any  
17 applicable canons of ethics or codes of professional responsibility. Nothing in this Order shall  
18 prohibit or interfere with the ability of counsel for any Party, or of experts specifically  
19 retained for this case, to represent any individual, corporation, or other entity adverse to any  
20 Party of its affiliate(s) in connection with any other matters.

21  
22           H.     In the event that any person or entity subject to this Order violates or gives  
23 reason to believe that he or she will violate this Order, the aggrieved Party shall be entitled to  
24 petition the Court for an appropriate remedy.

## VI. DURATION OF ORDER

A. Absent prior written consent of the Parties, the terms and conditions of this Order shall survive and remain in effect after the termination of this Case, including any appeals, except that:

1. There shall be no restriction on documents that are used as exhibits in Court (unless such exhibits were filed under seal); and
2. A Party may seek the written permission of the Designating Party or further order of the Court with respect to dissolution or modification of this Order.

B. The obligations and protections imposed by this Protective Order shall continue beyond the conclusion of the above captioned case, including any appellate proceedings, or until the Court Orders otherwise. Within sixty (60) days after final conclusion of this case, including any appellate proceedings, Confidential Information (other than any exhibits made of record with the Court) and all copies thereof (including electronic copies) shall be returned to the appropriate Designating Party or, at the sole option of the Designating Party as so stated in writing, shall be destroyed. Counsel for any party or third party receiving Confidential Information in the above captioned case shall provide written notice of compliance with this provision and shall deliver the notice to counsel for each Designating Party within ninety (90) days after final conclusion of this case, including any appellate proceedings. The only exception to this paragraph is that counsel for each Party may keep, as part of its files for this case, one copy of each document designated as Confidential Information.

C. This Order shall be binding upon the Parties, their counsel, successors, legal representatives, assigns, subsidiaries, divisions, employees, agents, independent contractors,

1 or other persons or entities over which the Parties have control or which purport to act on  
2 behalf of a Party.

4 D. The Parties agree to be bound by the terms of the Order upon signing by  
5 counsel for each of the Parties. Material designated as Confidential Information and produced  
6 by any party in discovery prior to the entry of this Protective Order by the Court shall be  
7 subject to the provisions of this Protective Order to the same extent as if such Protective  
8 Order had been entered by the Court as of the date such material was produced. Violation of  
9 its terms shall be subject to the same sanctions and penalties resulting from any violation of  
10 an order of this Court.  
11

12       E.     The Court shall retain continuing jurisdiction to enforce this Order, make any  
13 such amendment(s), modification(s) and/or alteration(s) to this Order as may be appropriate,  
14 and/or resolve any dispute(s) arising out of or concerning the use, production and/or  
15 disclosure of Confidential Information as provided under this Order.

Respectfully submitted,

LAW OFFICE OF TIMOTHY P. THOMAS LLC  
By: Timothy P. Thomas  
Timothy P. Thomas  
Dated: 12-4-15

Counsel for Plaintiff,  
Eagle Rock Contracting, LLC

DENTONS US LLP

By: Sandra B. Wick Mulvany  
Sandra B. Wick Mulvany  
Dated: 12/4/15

Counsel for Defendant,  
National Security Technologies, LLC

IT IS SO ORDERED.

Dated: December 8, 2015.

UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

## EAGLE ROCK CONTRACTING, LLC,

CASE NO. 2:14-cv-01278-GMN-NJK

Plaintiff,

vs.

## NATIONAL SECURITY TECHNOLOGIES, LLC,

Defendant.

**ATTACHMENT A TO PROTECTIVE ORDER**  
**CONFIDENTIALITY ACKNOWLEDGEMENT**

The undersigned hereby acknowledges and agrees:

I am aware that a Protective Order (the “Order”) has been entered in the above captioned case. I have had the opportunity to read the Order and understand that my willful disclosure of Confidential Information may constitute contempt of court and may be grounds for sanctions and/or penalties, including costs related to enforcement of this Order. I agree to submit to this Court’s jurisdiction for purposes of enforcement of the Order.

I will not disclose or discuss any Confidential Information with any person except those persons specifically listed in the Order under the procedures therein specified.

Signature: \_\_\_\_\_

Name (printed): \_\_\_\_\_

Address:

Telephone No.: \_\_\_\_\_

Dated: \_\_\_\_\_